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**IN THE
COURT OF APPEALS OF INDIANA**

MATTHEW R. REED,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 71A03-0712-CR-596

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jerome Frese, Judge
Cause No. 71D03-0501-FC-9

May 27, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Matthew R. Reed appeals the revocation of his probation. Specifically, he contends that the State did not timely file its petition to revoke his probation. Because the record shows that the State filed its petition before forty-five days after the State received notice that Reed violated his probation by committing a new criminal offense, we affirm the trial court.

Facts and Procedural History

In January 2005, Reed pled guilty to Class C felony forgery and was sentenced to four years, all of which was suspended. Reed was placed on probation “to and including 6-14-07.” Appellant’s App. p. 7. In December 2006 Reed committed battery, and in May 2007 Reed committed forgery.

On June 15, 2007—one day after Reed completed his probation—the State filed a petition to revoke his probation for committing the new criminal offense of battery and for failing to pay his probation user fees. *Id.* at 9. On July 5, 2007, the State filed an addendum to the petition to include that Reed committed the new criminal offense of forgery on May 18, 2007, and was arrested for that offense on June 4, 2007. *Id.* at 11. After several hearings, the trial court ruled that the petition to revoke Reed’s probation based upon the battery was untimely but that the petition to revoke Reed’s probation based upon the forgery was timely. After reserving the timeliness issue for appeal, Reed admitted to the probation violation based upon the forgery, and the court ordered him to serve his entire previously suspended four-year sentence. Reed now appeals.

Discussion and Decision

Reed contends that the trial court erred in revoking his probation. A trial court's decision to revoke probation is reviewed for an abuse of discretion. *Abernathy v. State*, 852 N.E.2d 1016, 1020 (Ind. Ct. App. 2006). Specifically, Reed argues that the State did not timely file its petition to revoke his probation based upon the May 2007 forgery. This issue is governed by Indiana Code § 35-38-2-3, which provides that a trial court may revoke a person's probation if:

- (1) the person has violated a condition of probation during the probationary period; and
- (2) the petition to revoke probation is filed during the probationary period or before the earlier of the following:
 - (A) One (1) year after the termination of probation.
 - (B) Forty-five (45) days after the state receives notice of the violation.

Here, it is undisputed that Reed violated a condition of probation during his probationary period. That is, he committed the crime of forgery nearly one month before his probation expired. Therefore, subsection (1) is satisfied. As for subsection (2), the State did not file the petition to revoke Reed's probation during his probationary period. Rather, it filed the addendum (which was based on the forgery) on July 5, 2007. This date must have been before forty-five days after the State received notice of the violation. The alleged forgery occurred on May 18, 2007. The police department completed its investigation and issued a report on May 23, 2007. At the probation revocation hearing, the trial court, apparently giving Reed the benefit of the doubt, "assumed" that the prosecutor's office received this report on May 23, 2007, as opposed to some later date. Oct. 31, 2007, Tr. p. 4. Reed was arrested on June 4, 2007, and the State filed the addendum to the petition to revoke Reed's probation on July 5, 2007. May 23, 2007—

the date that the trial court determined that the State received notice that Reed violated his probation—is forty-three days before the State filed the addendum to the petition to revoke Reed’s probation on July 5, 2007, and therefore subsection (2) is satisfied. Reed’s attempt to bring the date outside the forty-five day window by claiming that the State had notice of the violation on the date of the actual crime—May 18, 2007—fails because he bases his entire argument on the *assumption* that the police were called on this date. In any event, just because the police may have been alerted to a possible crime on this date does not mean that the State received notice that Reed in fact committed a new criminal offense in violation of his probation. The trial court did not abuse its discretion. We therefore affirm the revocation of Reed’s probation.

Affirmed.

MAY, J., and MATHIAS, J., concur.